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on January 26, 2009

PATENT

Docket No.: 02307K-186431US

Client Ref. No.: UCLA Case No.: 1999-543-

5

TOWNSEND and TOWNSEND and CREW LLP

By: _____ /Megan McCoy/
Megan McCoy

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Randal Eckert et al.

Application No.: 10/706,391

Filed: November 12, 2003

For: ANTI-MICROBIAL TARGETING
CHIMERIC PHARMACEUTICAL

Customer No.: 20350

Confirmation No.: 5819

Examiner: Robert A. Zeman

Art Unit: 1645

**REQUEST FOR
RECONSIDERATION OF PATENT
TERM ADJUSTMENT
DETERMINATION
UNDER 37 C.F.R. § 1.705(b)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.705(b), Applicants respectfully request reconsideration of the patent term adjustment determination. This request is accompanied by the fee set forth in § 1.18(e), a statement of facts as required under 37 C.F.R. § 1.705(b)(2), and payment of the Issue Fee.

In view of the following it is respectfully requested that Applicants be granted a minimum patent term adjustment of 412 days, with an additional term to be added if the patent issues after Tuesday, May 26, 2009 (which is 4 months from today's date of issue fee payment, January 26, 2009).

STATEMENT OF FACTS

Correct Patent Term Adjustment and the Bases Under 37 C.F.R. § 1.702 for the Adjustment

The correct patent term adjustment is 412 days, not 0 days as stated on the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) mailed on October 27, 2008.

The period of adjustment under § 1.702(a) is 362 days ("A delay").

The period of adjustment under § 1.702(b) is 467 days ("B delay").

The period adjustment under § 1.704(a) is 417 days ("applicant delay").

The period of adjustment under § 1.703(f) is 412 days.

The Relevant Dates as Specified in 37 C.F.R. §§ 1.703(a)-(e), §§ 1.704 and the Adjustment Specified in 37 C.F.R. § 1.703(f)

1. **§ 1.703(a)**

Applicants submit that the Office did correctly calculate the term adjustments to include the term adjustments that Applicants are entitled to under 37 CFR § 1.703(a)(1) as 351 days and under 37 CFR § 1.703(a)(2) as 11 days for a total of 362 days of term adjustment under 37 CFR § 1.703(a) (See Exhibit A, attached hereto).

The relevant dates are shown in the tables below.

Filing Date	14-month Date	Date of 1 st Restriction Requirement (§ 1.703(a)(1))	Days over 14 months
November 12, 2003	January 12, 2005	December 29, 2005	351

Date of Applicant Reply	4-month Date	Date Response (Notice of Allowance) mailed	Days over 14 months (§ 1.703(a)(2))
June 16, 2008	October 16, 2008	October 27, 2008	11

Applicants, however, respectfully request an additional period of adjustment equal to the number of days, if any, in the period beginning on the day after the date that is four months after the date on which the issue fee will be paid and all outstanding requirements are satisfied and ending on the date the patent issues. See, 37 C.F.R. § 1.703(a)(b).

2. § 1.703(b)

The Office failed to issue a patent within three years of the actual filing date of the above-referenced application. The period of adjustment under 37 C.F.R. § 1.702(b) begins on the day after the date that is three years from the filing date of the instant application, November 12, 2006, and ends on February 22, 2008, the date a Request for Continued Examination (RCE) in the above-identified U.S. Patent was filed with the U.S. Patent Office.

Thus, the effective period of adjustment under 37 C.F.R. § 1.702(b)(1) is 467 days as shown in the table below.

Filing Date	3-year Date	Date RCE filed	Days over 3 years through Issuance (§ 1.703(b)(1))
November 12, 2003	November 12, 2006	February 22, 2008	467 days

3. § 1.703(c)-(e)

There are no relevant dates as specified under §§ 1.703(c)-(e)

4. Overlapping periods under § 1.703(a)-(e)

Applicants have calculated overlapping periods in accordance with *Wyeth v. Dudas* (88 U.S.P.Q.2d 1538, D.D.C. 2008). Periods of delay under 35 U.S.C. §154(b)(1)(A) and 35 U.S.C. §154(b)(1)(B) overlap only if they occur on the same calendar day or days (*see Wyeth*).

There are no overlapping periods under § 1.703(a)-(e).

5. Applicant delay under 37 C.F.R. §1.704

The Office did correctly calculate the period of adjustment under § 1.704(a)-(e) as 417 days as indicated by the Patent Term Adjustment History (*see Exhibit A*). The 417 days is the sum of four periods of delay under 37 C.F.R. § 1.704. The specific delay types are defined below:

Reduction under § 1.704(b)	182 days
Reduction under § 1.704(c)(7)	219 days
Reduction under § 1.704(c)(8)	16 days
<u>Total reduction under § 1.704</u>	<u>417 days</u>

6. Total Patent Term Adjustment under § 1.703(f)

The period of adjustment under 37 C.F.R. § 1.703(f) is as follows:

Sum of delay under § 1.703(a)-(e):

Type "A" delay:	362 days
Type "B" delay:	467 days
"A" and "B" overlap:	0 days
<u>Adjusted Patent Office Delay</u>	<u>+ 829 days</u>

The above adjusted Patent Office delay (§ 1.703(a)-(e)) is subtracted by the reduction to the patent term due to Applicant delay (§ 1.704) to determine total Patent Term Adjustment under 37 C.F.R. § 1.703(f):

Patent Office Delay	+ 829 days
Applicant Delay	- 417 days
<u>Total Patent Term Adjustment</u>	<u>+ 412 days</u>

As discussed above, Applicants respectfully request an additional period of adjustment equal to the number of days, if any, under 37 C.F.R. § 1.703(a)(6). Any such period of adjustment under 37 C.F.R. § 1.703(a)(6) begins on May 26, 2009 and will not overlap with a period of adjustment under 37 C.F.R. § 1.702(b).

Terminal disclaimer

The instant application is not subject to a terminal disclaimer.

PATENT TERM ADJUSTMENT DETERMINATION

Pursuant to *Wyeth*, Applicants are entitled to 412 days of patent term adjustment, i.e., [829 days (Adjusted "A" delay + "B" delay)] minus [417 days (applicant delay)].

Based on the foregoing, Applicants respectfully request reconsideration of the patent term adjustment determination.

Please charge the fee set forth in 37 C.F.R. §1.18(e) (\$200.00) to Deposit Order Account No. 20-1430. Please charge any necessary additional fees or credit any overpayments to our Deposit Order Account No. 20-1430.

Respectfully submitted,



Carol P. Johns
Reg. No. 50,463

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: (415) 576-0200
Fax: (415) 576-0300
CPJ:m4m

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EXHIBIT A

10/706,391	ANTI-MICROBIAL TARGETING CHIMERIC PHARMACEUTICAL	01-26-
		2009::17:43:10

Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/706,391

Filing or 371(c) Date:	11-12-2003	USPTO Delay (PTO) Delay (days):	362
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	417
Post-Issue Petitions (days):	+0	Total PTA (days):	0
USPTO Adjustment(days):	+0	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
10-27-2008	Mail Notice of Allowance	11	
10-23-2008	Document Verification	‰	
10-23-2008	Notice of Allowance Data Verification Completed	‰	
10-23-2008	Case Docketed to Examiner in GAU	‰	
06-16-2008	Information Disclosure Statement considered	‰	
08-17-2008	Date Forwarded to Examiner	‰	
07-02-2008	Supplemental Response		16
08-13-2008	CRF Is Good Technically / Entered into Database		‰
06-16-2008	Information Disclosure Statement (IDS) Filed		‰
07-01-2008	Date Forwarded to Examiner		‰
06-16-2008	Response after Non-Final Action		‰
06-16-2008	Information Disclosure Statement (IDS) Filed		
06-09-2008	Change in Power of Attorney (May Include Associate POA)		
06-06-2008	Correspondence Address Change		
06-06-2008	Correspondence Address Change		
05-15-2008	Miscellaneous Incoming Letter		
05-08-2008	Mail Non-Final Rejection		
05-07-2008	Non-Final Rejection		
02-28-2008	Date Forwarded to Examiner		
02-28-2008	Date Forwarded to Examiner		
02-22-2008	Request for Continued Examination (RCE)		92
02-28-2008	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		‰
02-22-2008	Request for Extension of Time - Granted		‰
02-22-2008	Workflow - Request for RCE - Begin		‰
08-22-2007	Mail Final Rejection (PTOL - 326)		‰
08-20-2007	Final Rejection		
05-29-2007	Information Disclosure Statement considered		
07-16-2007	Mail-Petition Decision - Dismissed		
07-09-2007	Correspondence Address Change		
07-10-2007	Change in Power of Attorney (May Include Associate POA)		

EXHIBIT A - Cont'd

06-08-2007	Date Forwarded to Examiner	
05-29-2007	Response after Non-Final Action	90
05-29-2007	Reference capture on IDS	§
05-29-2007	Information Disclosure Statement (IDS) Filed	§
05-29-2007	Request for Extension of Time - Granted	§
05-29-2007	Information Disclosure Statement (IDS) Filed	§
05-08-2007	Mail Examiner Interview Summary (PTOL - 413)	§
03-08-2007	Examiner Interview Summary Record (PTOL - 413)	§
02-02-2007	Petition Entered	§
11-28-2006	Mail Non-Final Rejection	§
11-24-2006	Non-Final Rejection	§
11-12-2003	Information Disclosure Statement considered	
09-21-2006	Date Forwarded to Examiner	
09-06-2006	Response to Election / Restriction Filed	111
09-06-2006	Request for Extension of Time - Granted	§
07-31-2006	Mail Notice of Informal or Non-Responsive Amendment	§
05-23-2006	Date Forwarded to Examiner	§
05-18-2006	Informal or Non-Responsive Amendment after Examiner Action	§
05-18-2006	Response to Election / Restriction Filed	108
04-12-2006	Mail Notice of Informal or Non-Responsive Amendment	§
02-10-2006	Date Forwarded to Examiner	§
01-30-2006	Informal or Non-Responsive Amendment after Examiner Action	§
01-30-2006	Response to Election / Restriction Filed	§
12-29-2005	Mail Restriction Requirement	351
12-27-2005	Requirement for Restriction / Election	§
11-16-2005	Miscellaneous Incoming Letter	§
12-01-2005	IFW TSS Processing by Tech Center Complete	§
08-03-2005	Correspondence Address Change	§
08-03-2005	Change in Power of Attorney (May Include Associate POA)	§
11-12-2003	Information Disclosure Statement (IDS) Filed	§
11-12-2003	Information Disclosure Statement (IDS) Filed	§
04-20-2004	Case Docketed to Examiner in GAU	§
04-09-2004	Application Return from OIPE	§
04-09-2004	Application Return TO OIPE	§
04-08-2004	Application Dispatched from OIPE	§
04-09-2004	Application Is Now Complete	§
03-19-2004	Additional Application Filing Fees	§
03-19-2004	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	§
11-12-2003	Claim Preliminary Amendment	§

EXHIBIT A - Cont'd

01-12-2004	Notice Mailed--Application Incomplete--Filing Date Assigned	✉
12-30-2003	Cleared by OIPE CSR	✉
12-22-2003	IFW Scan & PACR Auto Security Review	✉
12-03-2003	CRF Is Good Technically / Entered into Database	✉
11-12-2003	CRF Disk Has Been Received by Preexam / Group / PCT	✉
11-12-2003	Initial Exam Team nn	✉

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